

**IT 06-16**

**Tax Type: Income Tax**

**Issue: Non-Filer (Failure To File Returns – Extends Limit)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**JANE AND JOHN DOE (deceased),  
Taxpayers**

**No. 00 IT 0000**

**SSN: 000-00-0000**

**Tax Years: 1997- 2000**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mrs. *Jane Doe* appearing *pro se*; Mr. Sean Cullinan, Special Assistant Attorney General, appearing on behalf of The Department of Revenue of the State of Illinois.

**Synopsis:**

On September 29, 2005, the Illinois Department of Revenue (hereinafter “the Department”) issued LTR-405’s, “Amended Income Tax Letters,” for tax years 1997 through 2000 to *Jane* and *John Doe* (hereinafter “taxpayers”). The basis of these Amended Income Tax Letters was the Department’s determination that the taxpayers had failed to file a claim for a refund of Illinois taxes within three years after their tax returns were filed. On October 22, 2005, taxpayers filed a timely protest and requested a hearing, which was held on June 27, 2006. Following a review of the testimony and the evidence

presented at the hearing, it is recommended that the Department's Amended Income Tax Letters be affirmed.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Amended Income Tax Letters dated September 29, 2005, which denied the taxpayers' claims for refunds for overpayment of 1997 through 2000 Illinois income taxes. Tr. pp. 5-7; Dept. Ex. Nos. 1 through 4.
2. On October 22, 2005, taxpayers filed a timely protest of the Amended Income Tax Letters and requested a hearing, which was held on June 27, 2006. Dept. Ex. No. 2.
3. Taxpayers amended their 1997 through 2000 returns on July 22, 2005. Tr. pp. 13-14; Dept. Ex. Nos. 1 through 4.

**Conclusions of Law:**

The Illinois Income Tax Act, Section 911, entitled "Limitations on Claims for Refunds" states that a claim for refund "shall be filed not later than 3 years after the date the return was filed..." 35 ILCS 5/911(1). Taxpayers' 1997 through 2000 IL-1040's were timely filed which means that the 2000 IL-1040 was filed by April 15, 2001. Taxpayers' request for a refund for overpayment of 1997 through 2000 taxes, filed in July, 2005, was filed more than 3 years after the returns at issue were filed. The Department notified the taxpayers that their claim for a refund would not be allowed because their request was filed after the statute of limitations had expired. It is noted here that Mrs. Doe testified at the hearing that the taxpayers did receive refunds for overpayments of taxes for some tax years after 2000. Tr. pp. 13-14.

Ms. *Doe* testified that she was unaware of the 3-year limitation on refunds and she argued further that the Department should have found the error on taxpayers' returns and advised them to make the corrections prior to the expiration of the statute of limitations. Tr. pp. 8-10. Mrs. *Doe* requested that she be allowed the refunds for equitable reasons. She is disabled and takes medication. Tr. pp. 9-10.

In Dow Chemical Company v. The Department of Revenue, 224 Ill. App. 3d 263 (1<sup>st</sup> Dist 1991), Dow requested a refund for the overpayment of taxes in the amount of \$401,237. The Court noted that Section 911 of the Illinois Income Tax Act (now 37 ILCS 5/911) requires that claims for income tax refunds be filed not later than 3 years after the return is filed. The Court denied Dow's claim for a refund finding that Dow's request, filed in 1983, for tax years 1975 through 1978, was filed after the statute of limitations had expired. In denying Dow's claim, the Court stated that the plain meaning of section 911 is that the taxpayer has an "affirmative duty" to file for a tax refund within the prescribed period of time. *Id.* At 267. In response to Dow's argument that the statute of limitations be tolled for equitable reasons, the Court stated:

Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy for Dow, such a decision is not supported by Illinois case law which holds that no exceptions which toll a statute of limitations or enlarge its scope will be implied. *Id.* at 268.

Accordingly, whereas I am sympathetic to the Mrs. *Doe*'s medical situation, Illinois law does not permit any discretion in the matter and requires that statutes of limitation be strictly construed. For the reasons stated above, it is my recommendation that the Amended Income Tax Letters dated September 29, 2005 for tax years 1997 through 2000 be finalized as issued.

Kenneth J. Galvin  
Administrative Law Judge

August 30, 2006